

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In Re:	§	
	§	
FIRE UP, INC.	§	Case No. 14-10447
	§	(Chapter 11)
Debtor. ¹	§	
	§	

**FIRST MOTION TO MODIFY AND EXTEND AUTHORITY FOR USE OF CASH
COLLATERAL IN THE ORDINARY COURSE**

A hearing will be conducted on this matter on July 3, 2014 at 1:30 pm in Courtroom No. 1, 903 San Jacinto, Austin, TX 78701.

If you object to the relief requested, you must respond in writing, specifically answering each paragraph of this pleading. Unless otherwise directed by the court, you must file your response with the clerk of the bankruptcy court within 21 days from the date you were served with this pleading. You must serve a copy of your response on the person who sent you the notice; otherwise, the court may treat the pleading as unopposed and grant the relief requested.

TO THE HONORABLE JUDGE OF SAID COURT:

Fired Up, Inc. (“Debtor”), Debtor in the above-styled and referenced case, hereby files this its First Motion to Modify and Extend Authority for Use of Cash Collateral in the Ordinary Course of Business (the “Motion”) which seeks an order from this Court approving a cash collateral budget for the months of July-October 2014--including a revised estimate for professional fees and a clarification of the instances in which the Debtor may exceed a specific line item on the budget. In support thereof, Debtor respectfully states the following:

¹ Until February 26, 2014, Debtor’s business was being operated partially by the Debtor, partially by Kona Restaurant Group, Inc. (“KRG”), a Delaware corporation wholly owned by the Debtor, and partially by Carino’s Italian Kitchen, Inc. (“CIK”), a Delaware corporation wholly owned by KRG. CIK was merged into KRG in Delaware and KRG was merged in to the Debtor, a Texas corporation, in Texas.

Jurisdiction

1 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The basis for the relief requested herein is primarily ground in 11 U.S.C. §§ 105(a) and 363 as supplemented and amplified by Fed. R. Bankr. P. 6003.

Background

4. On March 27, 2014 (“Petition Date”), Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Texas, Austin Division (“Court”), thereby commencing this chapter 11 case (“Case”). Debtor continues in possession of its property and is operating and managing its business as Debtor-in-Possession pursuant to the provisions of 11 U.S.C. §§ 1107(a) and 1108.

5. No trustee or examiner has been appointed in the Case. A creditors’ committee has been appointed pursuant to 11 U.S.C. § 1102.

6. On March 27, 2014, the Debtor filed its Emergency Motion Pursuant to 11 U.S.C. §363 for Authority to Use, Sell, or Lease Cash Collateral in the Ordinary Course (Cash Collateral Motion).

7. On May 7, 2014, the Court entered a Final Order on the Cash Collateral Motion (Final Order). The Final Order authorized the Debtor to use cash collateral according to its budget through July 30, 2014, as appended thereto.

Relief Requested

8. The Debtor seeks to modify and extend the authority for use of cash collateral. In particular, the Debtor seeks to increase the line item for professional fees based on actual historical data in contrast to its first budget in which the accrual for professional fees was estimated.

9. To date, the Debtor has received rough estimates of professional fees incurred (although no amounts have been approved to this date) as follows:

- a. April 2014 \$167,000
- b. May 2014 \$195,000

Based upon these estimates, Debtor requests aggregate authority to pay \$200,000 per month. This amount is based on the average of the estimates for April and May plus a cushion of 10%. Debtor also requests authority to carry the unused portion of any month's professional fee budget forward to subsequent months.

10. The Debtor has prepared a revised budget for the months of July through October of 2014, a copy of which is attached hereto as Exhibit A. If approved by the Court, the budget for the month of July 2014 would supersede the prior budget for this month.

11. Debtor also seeks authority to exceed the amount of any line item on the budget by twenty-five percent (25%) and the total amount for any given month by as much as ten percent (10%). Debtor also seeks authority to carry the unused portion of any month's overall budget forward to subsequent months.

12. The Debtor believes that the following parties have an interest in cash collateral and may be affected by this Motion:

Creditor	Debt Amount	Store#	Collateral	Insider ?	First Perfection
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					Date*/State
FRG Capital, LLC	\$13,436,864.02	N/A	Blanket lien (Lien subordinated to Prosperity Bank re: 4157 Buffalo Gap Rd., Abilene, TX)	Yes	TX 01/20/2011 DE 01/20/2011
General Electric Capital Corporation	\$514,005.62	#89	Real property and all property used in connection with 7017 Garth Road, Baytown, TX 77521	No	TX 6/17/2008 DE 6/17/2008
GE Capital Franchise Corporation	\$55,201.33 \$784,866.95	#103	Real property and all restaurant equipment, machinery, furniture, appliances, trade fixtures, goods located at 3147 S. Military Drive, San Antonio, TX		DE 11/14/2005
GE Capital Franchise Corporation	\$56,489.41	#90	All restaurant equipment, machinery, furniture, appliances, trade fixtures, goods located at 5750 Hwy. 6, Missouri City, Texas		DE 11/14/2005
GE Capital Franchise Finance Corporation	\$473,907.46	#87	Leasehold estate in Lafayette, LA		DE 01/23/2014
Independent Bank	\$607,451.26	#78	Machinery, equipment, furniture, fixtures, and other tangible personal property and proceeds located at 3050 Silverlake Village Drive, Pearland, Texas		TX 02/11/2009
Prosperity Bank	\$1,185,251.29	#102	Equipment, general intangibles, deposit accounts, proceeds and all personal property used at 4157 Buffalo Gap Rd., Abilene, TX 79605	No	TX 09/04/2012
Xerox			Leased property: Xerox P4112CPC		TX 02.09/2011

13. In addition to the contractual secured creditors, the Debtor owes delinquent ad valorem taxes on personal property it owns in the amount of approximately \$64,000 and an

unliquidated amount in current obligations to 155 local taxing entities that are not yet due. The Debtor also has a Certificate of Deposit which is pledged to secure a letter of credit for the Debtor's non-subscriber workman's compensation policy, as well as two certificates of deposit which are collateral for a former program with Wells Fargo. Debtor does not seek permission to use the Wells Fargo cash collateral.

14. Section 361 of the Bankruptcy Code sets forth various types of adequate protection which Debtor may provide:

- a. making periodic cash payments to the extent that the creditor suffers a decrease in the value of its interest in such property;
- b. granting replacement liens in collateral to compensate the creditor for any decrease in the value of the creditor's interest in such property; or
- c. granting other relief as will result in the realization of the indubitable equivalent of the creditor's interest in collateral

15. Debtor's original Cash Collateral Motion provided adequate protection to secured creditors in the form of replacement liens. FRG Capital, LLC and Independent Bank have filed motions for adequate protection. Any adequate protection other than replacement liens shall be considered pursuant to these motions.

16. Debtor requests authority to pay its usual and customary operating expenses of the same type and approximate amounts set forth on the attached budget for the months of July through October 2014 as set forth above.

Dated: June 11, 2014.

Respectfully Submitted,

BARRON & NEWBURGER, P.C.

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CERTIFICATE OF SERVICE

I certify that the foregoing was served by electronic mail on June 11, 2014, to all parties listed on the Seventh Master Limited Service List attached hereto and made a part hereof and electronically by the Court's ECF system to all parties registered to receive such service as well as to the following parties not on the Eighth Master Limited Service List by United States Mail, First Class, Postage Pre-Paid.

/s/ Stephen W. Sather

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Fired Up, Inc.
4 Month Budget

# weeks: Period Ended:	5 Weeks 7/30/2014	4 Weeks 8/27/2014	4 Weeks 9/24/2014	5 Weeks 10/29/2014	Total	
Store Budget						
Food Sales	7,452,150	6,554,989	5,786,533	7,469,248	27,262,920	85.9%
Beverage Sales	447,634	373,451	324,235	468,219	1,613,540	5.1%
Total Alcohol Sales	779,724	667,917	606,888	791,876	2,846,404	9.0%
Gross Sales	8,679,508	7,596,357	6,717,655	8,729,343	31,722,864	
Food Comps	710,558	622,171	551,114	714,672	2,598,514	82.4%
Alcohol Comps	0	0	0	0	0	0.0%
Employee Discounts	52,390	45,873	40,634	52,693	191,590	6.1%
BOGs	6,918	6,057	5,365	6,958	25,298	0.8%
Coupons	67,997	59,538	52,739	68,390	248,664	7.9%
Guest Loyalty	24,745	21,667	19,192	24,888	90,491	2.9%
Total Comps	862,607	755,306	669,044	867,602	3,154,558	9.9%
Net Sales	7,816,902	6,841,051	6,048,612	7,861,741	28,568,306	90.1%
Meat	220,072	192,601	170,258	221,176	804,107	11.3%
Seafood	135,285	118,398	104,663	135,964	494,309	7.0%
Poultry	249,610	218,453	193,110	250,863	912,037	12.8%
Produce	224,304	196,306	173,533	225,430	819,573	11.5%
Dairy	261,292	228,677	202,148	262,603	954,720	13.4%
Bakery	156,079	136,597	120,750	156,863	570,289	8.0%
Pasta	144,046	126,065	111,441	144,769	526,320	7.4%
Sauces	131,006	114,653	101,352	131,663	478,675	6.7%
Oils	76,918	67,316	59,507	77,304	281,045	4.0%
Desserts	55,260	48,363	42,752	55,538	201,913	2.8%
Other Food	291,154	254,811	225,251	292,615	1,063,831	15.0%
Other	0	0	0	0	0	0.0%
Total Food Cost	1,945,026	1,702,240	1,504,765	1,954,787	7,106,819	26.1%
NA Beverage	92,684	81,096	71,621	93,019	338,420	21.0%
Liquor	50,697	44,362	39,244	50,986	185,289	21.9%
Beer	53,837	47,109	41,674	54,144	196,763	23.3%
Wine	126,536	110,723	97,948	127,257	462,464	54.8%
Total Alcohol Costs	231,070	202,195	178,866	232,387	844,517	29.7%
Total Cost of Sales	2,268,780	1,985,531	1,755,251	2,280,193	8,289,755	26.1%
Hostess	97,426	85,323	75,429	97,838	356,016	3.8%
Foodserver	243,288	213,064	188,356	244,315	889,023	9.4%
Tender	92,439	80,956	71,568	92,830	337,792	3.6%
Bartender	69,402	60,780	53,732	69,695	253,610	2.7%
Curbside/To Go	49,808	43,620	38,562	50,018	182,008	1.9%
Catering	61,460	53,825	47,583	61,720	224,589	2.4%
Dining Room Expo	0	0	0	0	0	0.0%
Key Staff	36,417	31,893	28,195	36,571	133,077	1.4%
Dining Room Training	43,665	38,241	33,806	43,850	159,562	1.7%
Kitchen	779,128	682,337	603,210	782,419	2,847,094	30.1%
Steward	186,626	163,442	144,488	187,414	681,970	7.2%
Kitchen Training	18,623	16,310	14,418	18,702	68,053	0.7%
Meetings	9,322	8,164	7,217	9,362	34,066	0.4%
MIT/Incentive Credits	0	0	0	0	0	0.0%
Manager Salaries	540,966	473,762	418,823	543,251	1,976,802	20.9%
Staff Incentives	532	466	412	535	1,946	0.0%
Payroll Taxes	356,035	311,805	275,647	357,539	1,301,025	13.8%
Total Labor Expense	2,585,140	2,263,987	2,001,446	2,596,058	9,446,632	29.8%
Rebates	(33,773)	(29,561)	(26,118)	(33,989)	(123,441)	-10.6%
Fuel Charge	6,675	5,843	5,162	6,718	24,398	2.1%
Inventory Reserve Adjustment	0	0	0	0	0	0.0%
Supplies	102,533	89,744	79,293	103,190	374,761	32.3%
Catering Supplies	31,038	27,167	24,003	31,237	113,445	9.8%
China	10,809	9,461	8,359	10,878	39,507	3.4%

Fired Up, Inc.
4 Month Budget

# weeks: Period Ended:	5 Weeks 7/30/2014	4 Weeks 8/27/2014	4 Weeks 9/24/2014	5 Weeks 10/29/2014	Total	
Glassware	5,474	4,791	4,233	5,509	20,008	1.7%
Silverware	8,189	7,167	6,333	8,241	29,930	2.6%
TakeOut	78,111	68,368	60,406	78,611	285,495	24.6%
Chemicals	48,054	42,060	37,162	48,362	175,638	15.1%
Supply Rebates	0	0	0	0	0	0.0%
Uniforms	5,734	5,019	4,434	5,771	20,958	1.8%
Tableware / Menus	2,545	2,228	1,968	2,562	9,303	0.8%
Linen	52,222	45,708	40,385	52,556	190,871	16.4%
Total Restaurant Expense	317,611	277,996	245,622	319,644	1,160,874	3.7%
Telephone Expense	37,843	33,177	29,341	38,043	138,403	5.1%
WC Insurance - Fixed	23,576	20,669	18,279	23,701	86,224	3.2%
WC Insurance - Variable	5,239	4,593	4,062	5,267	19,161	0.7%
Fixed Rental	33,406	29,287	25,901	33,583	122,178	4.5%
Exterminator Expense	11,801	10,346	9,150	11,864	43,160	1.6%
R&M Variable - Electrical	11,288	9,896	8,752	11,348	41,285	1.5%
R&M Variable - Plumbing	15,665	13,734	12,146	15,749	57,294	2.1%
R&M Variable - HVAC	5,123	4,491	3,972	5,150	18,737	0.7%
R&M Variable - Equipment	57,027	49,996	44,216	57,330	208,569	7.7%
R&M Variable - Other	27,535	24,140	21,349	27,681	100,704	3.7%
Janitorial	57,085	50,046	44,260	57,387	208,778	7.7%
Maint Contracts	105,198	92,227	81,565	105,757	384,747	14.2%
Utilities Expense - Electric	188,893	165,603	146,458	189,895	690,849	25.5%
Utilities Expense - Water	61,203	53,657	47,454	61,528	223,841	8.3%
Utilities Expense - Gas	81,965	71,859	63,551	82,400	299,775	11.0%
Security Expense	18,974	16,634	14,711	19,075	69,395	2.6%
Total Facility Expense	741,821	650,354	575,168	745,757	2,713,100	8.6%
Office Expense	13,651	13,651	13,651	13,651	54,604	155.0%
Credit Card Chargebacks	884	884	884	884	3,538	10.0%
Bad Debt	0	0	0	0	0	0.0%
Misc/Delivery/Customer Relations	1,268	1,268	1,268	1,268	5,073	14.4%
Sales Tax	7,752	7,752	7,752	7,752	31,006	88.0%
Dues and Subscriptions Exp	451	451	451	451	1,806	5.1%
Community Interaction	3,963	3,963	3,963	3,963	15,854	45.0%
Parking Expense	0	0	0	0	0	0.0%
Misc. Income	(22,019)	(22,019)	(22,019)	(22,019)	(88,076)	-250.0%
Gift Certificates	2,857	2,857	2,857	2,857	11,426	32.4%
Petty Cash Expense	0	0	0	0	0	0.0%
Total Other Expenses	8,808	8,808	8,808	8,808	35,230	0.1%
Total Controllable Expense	5,922,161	5,186,675	4,586,295	5,950,460	21,645,591	68.2%
Net Operating Income	1,894,741	1,654,376	1,462,316	1,911,281	6,922,715	21.8%

EXHIBIT of 15

Fired Up, Inc.
4 Month Budget

# weeks: Period Ended:	5 Weeks 7/30/2014	4 Weeks 8/27/2014	4 Weeks 9/24/2014	5 Weeks 10/29/2014	Total	
Vacation Pay	11,857	10,374	9,179	11,936	43,346	9.3%
Staff Benefits	1,303	1,140	1,009	1,311	4,763	1.0%
Manager Bonus	55,082	48,194	42,642	55,447	201,365	43.4%
Manager Benefits	58,572	51,247	45,343	58,960	214,122	46.2%
Total Bonus & Benefits	126,814	110,955	98,172	127,654	463,596	1.5%
Credit Card Fees	152,464	121,971	121,971	152,464	548,869	44.5%
Marketing	63,907	51,126	51,126	63,907	230,065	18.6%
Liquor Tax	44,731	35,784	35,784	44,731	161,030	13.1%
Non-Controllable Misc. Exp	785	628	628	785	2,825	0.2%
Licenses Expense	8,049	6,439	6,439	8,049	28,975	2.3%
Bank Charges	3,877	3,102	3,102	3,877	13,957	1.1%
Other Insurance Expense	68,869	55,095	55,095	68,869	247,927	20.1%
Non-Controllable G&A Expense	342,680	274,144	274,144	342,680	1,233,648	3.9%
Rent or Lease Expense	649,829	649,829	649,829	649,829	2,599,317	80.5%
Property Tax	157,794	157,794	157,794	157,794	631,177	19.5%
Rent/ Lease, Property Tax	807,624	807,624	807,624	807,624	3,230,495	10.2%
Depreciation Expense	206,582	165,265	165,265	206,582	743,694	2.3%
Total Non-Controllable Expense	1,483,699	1,357,988	1,345,205	1,484,540	5,671,432	17.9%
Store Net Income	411,042	296,388	117,111	426,742	1,251,282	3.9%
Store EBITDA	617,623	461,653	282,376	633,323	1,994,977	6.3%
Less G&A and Additional Store Level Costs	(559,718)	(482,441)	(482,441)	(374,718)	(1,899,320)	-6.0%
Company EBITDA	57,905	(20,788)	(200,065)	258,605	95,657	0.3%
Less Estimated Capital Expenditures	-	(50,000)	(50,000)	(50,000)	(150,000)	-0.5%
Net Cash Flow	57,905	(70,788)	(250,065)	208,605	(54,343)	-0.2%
Add Beginning Cash Balance	2,035,851	2,093,756	2,022,968	1,772,903	1,981,508	
Projected Cash	2,093,756	2,022,968	1,772,903	1,981,508	1,927,165	

Fired Up, Inc.
4 Month Budget

# weeks: Period Ended:	5 Weeks 7/30/2014	4 Weeks 8/27/2014	4 Weeks 9/24/2014	5 Weeks 10/29/2014	Total
G&A and Additional Store Level Costs					
Total Franchise Revenue	222,970	178,376	178,376	222,970	802,691
<u>General & Administrative Expenses:</u>					
Corporate Compensation	134,153	107,322	107,322	134,153	482,950
Operations Compensation	115,550	92,440	92,440	115,550	415,981
Bonuses	18,727	14,982	14,982	18,727	67,418
Payroll Taxes	21,314	17,051	17,051	21,314	76,730
Vacation	11,358	9,086	9,086	11,358	40,888
Employee Benefits	873	698	698	873	3,141
Increased compensation	-	-	-	-	-
G&A - Compensation	301,974	241,580	241,580	301,974	1,087,108
Airfare	4,994	3,995	3,995	4,994	17,978
Lodging	8,227	6,582	6,582	8,227	29,618
Meals	2,884	2,307	2,307	2,884	10,382
Mileage/Gas/Parking	18,825	15,060	15,060	18,825	67,770
Auto Rental	1,277	1,021	1,021	1,277	4,596
Car Allowance	12,583	10,066	10,066	12,583	45,297
Entertainment / Gifts	90	72	72	90	324
Travel for IT Implementation	-	-	-	5,000	5,000
G&A - T&E	48,879	39,103	39,103	53,879	180,965
Bad Debt	-	-	-	-	-
Bank charges	11,016	8,813	8,813	11,016	39,659
Gift Card Fees	2,600	2,080	2,080	2,600	9,360
Insurance	55,877	44,701	44,701	55,877	201,156
Misc Exps	-	-	-	-	-
Non Income Based Taxes	-	-	-	-	-
Other Taxes	-	-	-	-	-
Penalties	-	-	-	-	-
Sales Tax Discount	-	-	-	-	-
Other income	(3,250)	(2,600)	(2,600)	(3,250)	(11,700)
G&A - Finance	66,243	52,994	52,994	66,243	238,474
Charitable Contributions	-	-	-	-	-
Computer/IT Expenses	13,990	11,192	11,192	13,990	50,364
Dues & Subscriptions	-	-	-	-	-
Licenses	-	-	-	-	-
Research and Development	416	333	333	416	1,498
Franchise Exps	-	-	-	-	-
Special Projects	-	-	-	-	-
Corporate Rebates	(2,329)	(1,863)	(1,863)	(2,329)	(8,383)
G&A - General	12,078	9,662	9,662	12,078	43,479
Rent	3,333	3,333	3,333	3,333	13,332
Property Taxes	1,400	1,120	1,120	1,400	5,039
Utilities	-	-	-	-	-
Telephone	8,985	7,188	7,188	8,985	32,344
Security	-	-	-	-	-
R&M Variable	-	-	-	-	-
Fixed Rental	3,548	2,839	2,839	3,548	12,775
Freight & Postage	2,495	1,996	1,996	2,495	8,982
Office Expenses	9,981	7,985	7,985	9,981	35,931
G&A - Facilities	29,742	24,460	24,460	29,742	108,403
Marketing	-	-	-	-	-
Corporate Menu Expenses	6,799	5,439	5,439	6,799	24,475
G&A - Marketing	6,799	5,439	5,439	6,799	24,475

Fired Up, Inc.
4 Month Budget

# weeks: Period Ended:	5 Weeks 7/30/2014	4 Weeks 8/27/2014	4 Weeks 9/24/2014	5 Weeks 10/29/2014	Total
Accounting Expenses	5,200	4,160	4,160	5,200	18,720
Contract Maintenance	6,027	4,821	4,821	6,027	21,696
Legal and Professional Expense	15,522	12,418	12,418	15,522	55,879
Professional Reimbursements	-	-	-	-	-
Bankruptcy Prof Fees	200,000	200,000	200,000	-	600,000
US Trustee	20,000	-	-	20,000	40,000
G&A - Professional Fees	246,749	221,399	221,399	46,749	736,296
Personal Development	-	-	-	-	-
Uniforms	-	-	-	-	-
Meetings / Seminars	252	201	201	252	906
Relocation Expense	10,743	8,595	8,595	10,743	38,676
Training Expenses	2,400	1,920	1,920	2,400	8,640
Recruiting	855	684	684	855	3,078
Bonuses-Mgr Training	-	-	-	-	-
MIT Salaries	28,600	22,880	22,880	28,600	102,960
401K-Employer Matching	2,375	1,900	1,900	2,375	8,551
G&A - People	45,225	36,180	36,180	45,225	162,810
Total General and administrative	757,688	630,817	630,817	562,688	2,582,011
Closed Store Expenses-General & Utilities	25,000	-	-	-	25,000
Closed Store Expenses - Rent/CAM	-	-	-	-	-
Closed Store Expenses - Property Tax	-	-	-	-	-
Total Closed Store Expenses	25,000	-	-	-	25,000
(Gain)loss sale of assets	-	-	-	-	-
Additional Store-Level Costs					
Repairs & Maintenance-Remodel	-	25,000	25,000	25,000	75,000
New POS Software Subscription	-	5,000	5,000	10,000	20,000
Total Additional Store-Level Costs	-	30,000	30,000	35,000	95,000
Amortization Expense	-	-	-	-	-
Corporate Depreciation	13,103	10,482	10,482	13,103	47,171
Closed Store - Depreciation	85,285	68,228	68,228	85,285	307,027
Total Corp Depreciation and Amortization	98,388	78,711	78,711	98,388	354,197
Interest Expense	-	-	-	-	-
Interest Income	-	-	-	-	-
Interest expense, net	-	-	-	-	-
Total G&A and Add'l Corp Costs	(658,107)	(561,152)	(561,152)	(473,107)	(2,253,517)
Total G&A and Add'l Corp Costs Excl Depr	(559,718)	(482,441)	(482,441)	(374,718)	(1,899,320)
<u>Capital Expenses</u>					
New POS Hardware	-	25,000	25,000	25,000	75,000
General	-	25,000	25,000	25,000	75,000
Total Capital Expenses	-	50,000	50,000	50,000	150,000